

Before the Federal Communications Commission

In the Matter of Petition for Declaratory
Ruling to Clarify Provision of Section
332(c)(7)(B) to Ensure Timely Siting Review
and to Preempt under Section 253 State and
Local Ordinances that Classify All Wireless
Siting Proposals as Requiring A Variance

WT Docket No. 08-165

Comments of Arthur Firstenberg

This petition by the CTIA would remove virtually all zoning authority of local governments over wireless facility siting applications. Section 704 of the Telecommunications Act, as already implemented, has already created enough havoc for planning and zoning authorities throughout the United States. Let's not make a bad situation worse. What the CTIA is asking for would make a mockery of the introduction to Section 704. It states:

“Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.”

If this petition is granted, States and local governments would have virtually *no authority left* over these facilities. The Federal Communications Commission must deny this petition outright.

The CTIA is asking for the following:

- 1. Collocated wireless facilities would be deemed granted if a local government did not take *final action* on applications within 45 days!**
- 2. All other wireless facilities would be deemed granted if final action is not taken within 75 days!**
- 3. Alternatively, CTIA wants applicants to be entitled to a court-ordered injunction granting applications if local zoning authorities delay more than 45 or 75 days.**

With all due respect, it is impossible for final action to take place in such a short amount of time in any jurisdiction in this country. After filing of an application, there must be time for the planning department to review the application for completeness and for compliance with zoning codes. Time for a hearing, if any, to be scheduled before the appropriate official or body. Time for that hearing to be legally noticed. Time for allowable appeals to be filed. Time for the appeals to be legally noticed and scheduled for a hearing.

Local appeals processes alone take more time than this. The statute of limitations for citizens to file appeals in zoning matters is normally at least 30 days, just to get the appeal filed, let alone to get it properly noticed and scheduled for a hearing. It is impossible for an application to be processed, legally noticed, scheduled for a hearing, acted upon, and appealed, and for a decision to become final in less than 45 or 75 days.

4. CTIA wants the FCC to bar zoning decisions that take into account existing service by other providers.

CTIA claims that this would “prevent a specific provider from providing service to a locations.” Nonsense! That’s what roaming agreements are for. Every single provider doesn’t have to have their own separate tower in order to serve their customers.

5. Finally, CTIA requests that local ordinances be declared null and void if they require a variance to build a wireless facility.

In other words, CTIA is asking the FCC to become a national zoning authority and to require that wireless facilities be a permitted use in all zoning districts throughout the country.

What authority will local zoning boards have left if these requests are implemented?
None.

This petition is in flagrant violation of local government authority and of Section 704 itself. It must be denied.

Respectfully submitted,

Arthur Firstenberg
PO Box 6216
Santa Fe, NM 87502
(505) 471-0129